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BOO SIAM HONG

v.

TEOH TOH WENG

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HIGH COURT MALAYA, TAIPING
AHMAD NASFY YASIN JC
[CIVIL SUIT NO: S-22NCVC-12-11-2011]
2 DECEMBER 2013

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TRUSTS: *Powers - Administrator - Deed of gift - Whether valid in law - Whether administrators acted beyond their powers in making deed of gift - Whether previous permission of court obtained - Indefeasibility of title - Private caveat - Lodgment of - Whether defendant had registrable interest in land - Failure to identify portion of land - Whether caveat*

D

wrongly entered - Probate and Administration Act 1959, s. 60(4)(a) - National Land Code, ss. 323(3)(c) & 340

LAND LAW: *Transfer - Deed of gift - Whether valid in law - Administrators of estate - Whether administrators acted beyond their powers in making deed of gift - Whether previous permission of court*

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obtained - Indefeasibility of title - Private caveat - Lodgment of - Whether defendant had registrable interest in land - Failure to identify portion of land - Whether caveat wrongly entered - Probate and Administration Act 1959, s. 60(4)(a) - National Land Code, ss. 323(3)(c) & 340

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CIVIL PROCEDURE: *Summary disposal order - Rules of Court 2012, O. 14A - Disposal of case on point of law - Application for - Deed of gift - Transfer of rights in land - Whether deed valid in law - Whether issue suitable to be determined without full trial*

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The plaintiff and one Khor Hong Luang ('Khor') were the administrators of the estate of the deceased ('the estate of TAY'). The deceased died leaving behind a piece of land ('the land'). Since distribution was not made at that point of time, the title to

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the land still remained in the name of the plaintiff and Khor, as representatives. The defendant, who had been occupying a portion of the land, claimed that he had beneficial interest over the said portion pursuant to a deed of gift dated 12 August 1984 ('the deed') and lodged a private caveat on the land. *Vide*

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encl. 53, the plaintiff made an application under O. 14A and/or O. 33 r. 2 of the Rules of Court 2012 ('ROC') for determination

of whether the deed, which formed the crux of the defendant's defence and counter-claim, was valid in law. According to the defendant, the deed contained terms where it was agreed that all rights in respect of the said portion of the land would be transferred to the defendant and the defendant was allowed to reside on the said portion for an indefinite period of time. Further, it was contended that the suit was not suitable to be disposed pursuant to O. 14A and/or O. 33 r. 2 of the ROC as there would be a need to call witnesses in relation to the validity of the deed.

Held (allowing encl. 53 with costs):

(1) Order 14A of the ROC can be resorted to when there was no substantial dispute as to the facts. The question of law posed for determination must be one that existed from the facts before the court and does not involve hypothetical or based on some facts not admitted or proved before the court. On the facts, the issue of whether the deed was valid and lawful would be decided without the need for a full trial. (paras 11 & 12)

(2) The existence of the deed was not disputed. The administrators had acted beyond their powers in making the deed of gift and their action was contrary to the wishes of the deceased. On that basis, the deed could not be considered to be valid as against the estate of the deceased. Pursuant to s. 60(4)(a) of the Probate and Administration Act 1959, the plaintiff could not, amongst others, gift the land or part of it without the previous permission of the court. On the facts, there was no evidence to show that either the plaintiff and/or the defendant had obtained the previous permission of the court to purportedly give effect to the gift of the portion of the land to the defendant. Thus, the defendant's claim was contrary to written law and was unlawful and illegal. (paras 15 & 17)

(3) The purported gift had not been perfected since 1984 as it appeared that no transfer was affected into the defendant's name by registering his name in the title to the portion of the land. Even assuming that the deed was valid, an imperfect gift need not be fulfilled by the donor, since no consideration had been given by the donor to acquire it and an incomplete gift

A can be revoked at any time. Further, the deed did not state that the consideration for the gift was the payment of quit rents by the defendant. (paras 18 & 19)

(4) The plaintiff and Khor were the registered proprietors of the B land, *albeit* in their representative capacity to the estate of TAY. Their title to the land was indefeasible pursuant to s. 340 of the National Land Code. In respect of the private caveat, the defendant had failed to identify the portion in the land by annexing a plan thereto (s. 323(3)(c) of the National C Land Code). Further, the defendant did not have a registrable interest in the portion of the land and thus, the caveat was wrongly entered. The defence and counter claim failed *in limine* since the defendant had relied on the deed which was invalid and unenforceable. (paras 20, 22 & 24)

D **Case(s) referred to:**

Allen v. Gulf Oil Refining Ltd [1979] 3 All ER 1008 ***(refd)***

Amar Singh Sundar Singh & Ors v. Jivanjit Kaur Sohan Singh [2010] 7 CLJ 285 CA ***(refd)***

Ang Toon Chew & Sons (Malaysia) Sdn Bhd v. Wakil-wakil Diri Bagi E *Mohamed Taib Yusoff, Si Mati [1997] 2 CLJ 687 HC* ***(refd)***

Chor Phaik Har v. Farlim Properties Sdn Bhd [1997] 4 CLJ 393 FC ***(refd)***

Fraser & Neave Ltd v. Aberdeen Asset Management Asia Ltd [2002] 4 SLR 473 ***(refd)***

Hue Chooi Yin v. Chew Pit King [2004] 8 CLJ 263 HC ***(refd)***

In re Len Chee Omnibus Company Ltd; Chin Sow Lan v. Lee Chee Omnibus F *Company Ltd & Ors [1969] 1 LNS 59 HC* ***(refd)***

Koperasi Wanita Sarawak Bhd & Anor v. Robert Sim Teck Hock [2005] 3 CLJ 188 CA ***(refd)***

Lekaz Constructions Sdn Bhd v. KOP Petroleum Sdn Bhd; HSBC Bank Malaysia Bhd (Intervener) [2003] 4 CLJ 377 HC ***(refd)***

G *Luxor Holdings Sdn Bhd v. Hainal-Konyi (M) Sdn Bhd [2006] 2 CLJ 856 CA* ***(refd)***

M & J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor [1994] 2 CLJ 14 SC ***(refd)***

Mangamal Jhamatmal Lalwani v. NE Vickerema [2001] SLR 90 ***(refd)***

Manian Kandasamy v. Pentadbir Tanah Daerah Raub & Anor [2011] 7 CLJ H *583 CA* ***(refd)***

Ngan & Ngan Holdings Sdn Bhd & Anor v. Central Mercantile Corporation (M) Sdn Bhd [2010] 3 CLJ 818 CA ***(refd)***

Pentadbir Tanah Daerah, Pontian & Ors v. Ossons Venture Sdn Bhd [2009] 6 CLJ 713 CA ***(refd)***

I *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal [2003] 4 CLJ 337 CA* ***(refd)***

Rira Bina Sdn Bhd v. GBC Construction Sdn Bhd [2011] 2 CLJ 653 HC ***(refd)***
Saadiah Jusoh v. Ahmad Jusoh [1974] 1 LNS 145 HC ***(refd)***
Samanda Holdings Bhd v. Sakullah Holdings Sdn Bhd & Ors [2006] 5 CLJ 459 HC ***(refd)***
Savant-Asia Sdn Bhd v. Sunway PMI-Pile Construction Sdn Bhd [2008] 6 CLJ 681 FC ***(refd)***
Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd [2008] 2 CLJ 686 CA ***(refd)***
Shong Mor Sdn Bhd v. Cayman Development (Kedah) Sdn Bhd & Ors [2009] 9 MLJ 175 ***(refd)***
Sumner v. William Henderson [1963] 2 All ER 712 ***(refd)***
Suntoso Jacob v. Kong Miao Ming & Anor [1984] 1 LNS 32 HC ***(refd)***
Tan Ying Hong v. Tan Sian San & Ors [2010] 2 CLJ 269 FC ***(refd)***

Legislation referred to:
National Land Code, ss. 323(3)(c), 340
Probate and Administration Act 1959, s. 60(4)(a)
Rules of Court 2012, O. 14A, O. 33 r. 2
Rules of the High Court 1980, O. 14A

For the plaintiff - Shamsul Jamil; M/s Presgrave & Matthews
For the defendant - Theivanthiran; M/s Thevin Chandran & Assocs

Reported by Kumitha Abd Majid

JUDGMENT

Ahmad Nasfy Yasin JC:

Introduction

[1] This case that is before this court reminds us of the a passage from Ernest Hemingway's celebrated work, *For whom the Bell Tolls* where it ran as follows:

> I had an inheritance from my father. It was the moon and the sun. And though I roam all over the world, the spending of it's never done.

When the inheritance is nothing but the moon and the sky the propensity of disputes between family members are naught but when the patriarch or the matriarch leaves behind abundance or even a small estate the probabilities of disputes escalates, in consonance with the escalation of the property itself. Instead of becoming a string that binds family members the property becomes

A the object that wedges families apart with one throwing allegations and sometimes punches against another. Such is the unpalatable state of things brought about by inheritance! Most family members failed to realise that each member of a family is like a branch on a tree, every one grows in different directions, but the roots remain
B the same.

Brief Facts Of The Case

[2] Teoh Ah Yan (the deceased) must have been a self-made person. The deceased died leaving behind a considerable amount
C of properties, including a piece of land held under HS(D) 9168, PT 106 Mukim Tanjung Piandang, Daerah Kerian having an area of 7,469 hectares ("the land"). The deceased left a will and appointed executors to oversee the distribution of the estate. Unfortunately before the executors could not complete the task as
D willed by the deceased. The plaintiff and one Khor Hong Luang (who has since deceased) ("Khor") were appointed as the administrators of the estate of the deceased. ("the estate of TAY")

E **[3]** Unfortunately again the administration of the estate TAY, was not completed by the administrators as distribution has not been made to the respective beneficiaries of the estate of TAY. The title to the land still remains in the name of the plaintiff and Khor, as representatives.

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[4] The defendant is an undischarged bankrupt. He has been in occupation and is occupying a portion of the land to the size of one acre ("the portion of the land"). The defendant has lodged a private caveat *vide* Presentation No: 19954/2009 on the land.

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[5] The defendant claims to have a beneficial interest over the portion of the land pursuant to a deed of gift dated 12 August 1984 ("the deed").

The Application

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[6] The plaintiff has filed the present encl. 53 for the disposal of this matter by way of a question of law, pursuant to O. 14A and/or O. 33 r. 2 of the Rules of Court 2012.

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[7] The relevant cause papers filed by the parties that are relevant to the application are as follows: A

(i) Fakta-fakta yang Dipersetujui (AF)

(ii) Isu-isu untuk dibicarakan (TI)

(iii) Ikatan Pliding (BP) B

(iv) Ikatan Dokumen Yang Dipersetujui (AD)

(v) Ikatan Dokumen Yang Tidak Dipersetujui (DD)

(vi) Ikatan Dokumen Defendan (DB) C

[8] The plaintiff, in this application sought for the court to dispose this matter by determining a question of law: whether the deed which formed the crux of the defendant's defence and counter-claim is valid in law; and if the answer is in the negative, then the defendant will be without any defence and the plaintiff is entitled to the relief claimed. It follows also that as the defendant's counter-claim is also grounded on the deed, the determination on the validity of the deed would have an impact on the sustainability of the counter-claim. D E

[9] In this context, it is appropriate for me to refer to O. 14A to determine whether the instant application falls within the ambit of the order and it is appropriate for me to deal with this case in a summary manner. Order 14A reads as follows: F

> 1. (1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that: G
>
> (a) such question is suitable for determination without the full trial of the action; and
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> (b) such determination will finally determine the entire cause or matter or any claim or issue therein. H
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> (2) On such determination the Court may dismiss the cause or matter or make such order or judgment as it thinks just.

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(3) The Court shall not determine any question under this Order unless the parties have had an opportunity of being heard on the question.

(4) The jurisdiction of the Court under this Order may be exercised by a Registrar.

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(5) Nothing in this Order shall limit the powers of the Court under Order 18, rule 19 or any other provisions of these Rules.

Manner in which applications under rule 1 may be made (O. 14A,
C r. 2)

2. An application under rule 1 may be made by a notice of application or, notwithstanding Order 32, rule 1, may be made orally in the course of any interlocutory application to the Court.

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[10] From the above what is apparent is that the order ought to be invoked when the following conditions are satisfied, namely:

(a) such question is suitable for determination without the full
E trial of the action; and

(b) such determination will finally determine the entire cause or matter or any claim or issue therein.

I must state that the manner in which this provision is drafted
F leaves no uncertainty in so far as to whether the conditions are to be read conjunctively or disjunctively. For the semi colon followed by the word "and" clearly signify that both of the conditions must be satisfied. Whilst the conditions are clear, the determination as to whether a fact pattern involves a "question
G that is suitable for determination" is less clear. Thus resort could be had to decided cases on this point. In so doing perhaps it is appropriate to clarify the misunderstanding that O. 14A is of recent origin. While it is true that O. 14A was inserted into the Rules of the High Court 1980, the precursor to the current Rules
H of Court 2012, *vide* the Rules of the High Court (Amendment) 2000 *vide* PU(A) 342/2000 w.e.f. 21 September 2000, the same provision was already obtainable in the English Rules of Supreme Court 1965. Thus resort had been made to cases decided by the English courts – see for example the case of *Hue Chooi Yin v. Chew*
I *Pit King* [2004] 8 CLJ 263; [2006] 4 MLJ 790 – per Faiza Thamby Chik J. At this juncture also it is suitable for me to refer

to case of *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337, where the Court of Appeal had occasion to state as follows:

> In a nutshell, the Order enables the court to determine any question of law or construction of document where it appears to the court that such question is suitable for determination without the full trial of the action and such determination will finally determine the entire cause or matter or any claim or issue therein. The Order is new to our civil procedure and hence, the few local decisions of the High Court on the ambit of O. 14A are not instructive. For that reason, we are inclined to refer to foreign cases decided on the equivalent of our O. 14A. In *Korso Finance Establishment Anstalt v. John Wedge* (unreported, 15 Feb 1994, CA Transcript No. 14/387), the English Court of Appeal laid down the following principles on the ambit of O. 14A:
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> 1. An issue is "a disputed point of fact or law relied on by way of claim or defence".
>
> 2. A question of construction is well capable of constituting an issue.
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> 3. If a question of construction will finally determine whether an important issue is suitable for determination under O. 14A and where it is a dominant feature of the case a court ought to proceed to so determine such issue.
>
> 4. Respondents to an application under O. 14A are not entitled to contend they should be allowed to hunt around for evidence or something that might turn up on discovery which could be relied upon to explain or modify the meaning of the relevant document. If these were material circumstances of which the court should take account in construing the document, they must be taken to have been known, and could only be such as were known, to the parties when the agreement was made. In the absence of such evidence the court should not refrain from dealing with the application. (see The Supreme Court Practice 1999 Vol 1 para. 14A/2/5).

In the same case it was held:

> In my judgment the question of construction is well capable of constituting an issue in the cause or matter. An issue may be said to be a disputed point of fact or law relied on by way of claim or defence. In the present case the

A determination of the question of construction one way or the other will finally determine an important issue, namely whether the respondents are primarily liable under the agreement. If the determination is in favour of the appellant it will finally determine the entire matter ...

B The whole case does not have to be disposed of. It is sufficient if substantial matters can be disposed of.

The real question in this case at the end and really crucial one it seems to me is: will the court be able to dispose of the case or the major part of the case or the most C significant issue in the case under O. 14A dealing with the matter today. (@ 17C of the Transcript).

Clearly one would prefer the facts to have been simpler, but the fact that they are complicated does not rule out the D use of the Order. (@ 7 of the Transcript).

[11] Based on the decision of the Court of Appeal above cited and other decided cases, which I shall mention below, the following could be synthesised, which I must hasten to add is neither final nor exhaustive:

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(i) That O. 14A can be resorted to when there is no substantial dispute as to facts, but involves only of constructions of documents, which have been proved or admitted. It follows therefore where extrinsic evidence are required the procedure F under O. 14A is unsuitable – see *Shong Mor Sdn Bhd v. Cayman Development (Kedah) Sdn Bhd & Ors* [2009] 9 MLJ 175 and *Fraser & Neave Ltd v. Aberdeen Asset Management Asia Ltd* [2002] 4 SLR 473; *Savant-Asia Sdn Bhd v. Sunway PMI-Pile Construction Sdn Bhd* [2008] 6 CLJ 681; [2009] 5 MLJ G 754; *Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd* [2008] 2 CLJ 686; [2007] 7 MLJ 385;

(ii) The procedure under this order can be used when the question of law or construction to be determined can be H stated in clear and precise terms and the determination of the question of law will then determine the claim or the counter-claim by the parties to the action and it is not sufficient where the question of law would only determine the issue between some of the parties to the action – see *Samanda Holdings* I *Berhad v. Sakullah Holdings Sdn Bhd & Ors* [2006] 5 CLJ 459;

[2006] 4 MLJ 381; *Allen v. Gulf Oil Refining Ltd* [1979] 3 All ER 1008; *Lekaz Constructions Sdn Bhd v. KOP Petroleum Sdn Bhd; HSBC Bank Malaysia Bhd (Intervener)* [2003] 4 CLJ 377;

(iii) The question of law posed for determination must be one that existed from the facts before the court and does not involve hypothetical or based on some facts not admitted or proved before the court – see *Sumner v. William Henderson* [1963] 2 All ER 712; *Mangamal Jhamatmal Lalwani v. NE Vickerama* [2001] SLR 90;

(iv) That the case appears to be or is complicated will not, *ipso facto*, prohibit the court from entertaining and determining the case under this order – see *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337;

(v) The order may be invoked either by a plaintiff or the defendant to the action – see *Pentadbir Tanah Daerah, Pontian & Ors v. Ossons Venture Sdn Bhd* [2009] 6 CLJ 713; [2009] 6 MLJ 182; *Rira Bina Sdn Bhd v. GBC Construction Sdn Bhd* [2011] 2 CLJ 653; [2011] 2 MLJ 378;

(vi) The court in making the determination under O. 14A is not restricted to making the order sought under the statement of claim and may make orders that are appropriate given the determination of the question of law – see *Pentadbir Tanah Daerah, Pontian & Ors v. Ossons Venture Sdn Bhd* [2009] 6 CLJ 713; [2009] 6 MLJ 182.

Issues

[12] With the above principles in mind I would now return to the facts of this case. The primary or crux of the defendant's defence is that he is in occupation of the portion by virtue of the deed. The basis or cause of his counter-claim is the deed as well. It appear to this court that the issue of whether the deed is valid and lawful as claimed by the defendant would fall to be decided without need of full trial whereby its determination will finally determine the entire cause of action. Thus the issue to be determined by this court is whether the deed dated 12 August 1984 is valid and lawful or otherwise. In the event the deed is proven to be invalid or unlawful, then the defendant's defence and counter-claim would fail *in limine* and the plaintiff would be entitled

A to judgment on the claim herein. This to my mind is an appropriate case where the procedure under O. 14A or O. 33 r. 2 of the Rules of Court 2012 ought to apply.

Submissions

B **[13]** Counsel for the plaintiff had submitted as follows:

(i) It is not disputed that the plaintiff is the co-administrator of the estate of TAY and the estate has not been distributed as yet since the title to the land is still in the name of the C plaintiff and Khor;

(ii) Pursuant to s. 60(4)(a) of the Probate and Administration Act 1959 ("PAA") the plaintiff cannot, amongst others, create a gift of the land or part of it, without the previous permission D of the court. There is not an *iota* of evidence before this court that the plaintiff and/or the defendant have obtained the previous permission of the court to purportedly create a gift of the portion to the defendant. Therefore, the claim of the defendant is contrary to the written law of the land and is not E only unlawful but illegal as well.

(iii) The plaintiff, Khor and Teoh are not the named beneficiaries to the estate of TAY. As such they do not have any beneficial interest in the land. They were merely administrators to the estate of TAY and holding the assets of the estate inclusive F of the land, on trust for respective named beneficiaries. Thus the allegation of the defendant that the plaintiff, Khor and one Teoh Chye Khoon executed the deed between them and the defendant is baseless. Based on the law and the facts of the case it appear that the deed is invalid and null and void G and the answer to the question posed in encl. 53 ought to be in the "negative".

[14] Counsel for the defendant opposed the application on the following grounds:

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(i) The deceased had named Teow Cheow Choon and Teoh Ah Phong as his executors in his will dated 30 October 1965 who has passed away on 31 December 1976 and 11 May 1978 respectively without administering the estate of TAY I completely;

(ii) Following the demise of both the executors of the estate of TAY, the authority to administer was granted to Boo Siam (the plaintiff) and Khor Hong Luang *vide* a letter of administration dated 11 October 1979 for purposes of administering the estate of TAY *vide* the Petition No. 506/1978;

(iii) When the plaintiff and Khor Hong Luang subsequently took over the ownership of the land, a deed of gift dated 12 August 1984 was signed between the plaintiff and Teoh Chye Khoon @ Teow Chye Khoon ("the first party") and Teoh Chow Knee as the nephew to Teoh Chye Khoon @ Teow Chye Khoon and also Teoh Ah Yah was granted and interest and/or equitable right over a portion of the land together with the house No. TB 351 which was erected thereon. It was agreed between the parties that the first party would transfer all their rights in respect of the said portion of the land without any condition attached to the defendant and the defendant is allowed to reside on the said portion of the land for an indefinite period of time with a condition that the said portion of the land ought not to be sold to any person. It is also one of the terms in the said deed of gift that the defendant was required to pay quit rent in respect of portion of the land. The defendant's counsel also contended the evidence of gift was supported by a statutory declaration by the children and/or the beneficiaries of Teoh Chye Khoon @ Teow Chye Khoon, by the name of Teow Kim Joo, Teow Kim Teck and Teow Teik Siang who had confirmed the fact that Teoh Chye Khoon @ Teow Chye Khoon who was also one of the owners to the said property that a deed of gift was signed between the parties concerned.

(iv) There are dispute of fact by the plaintiff and the defendant in particular facts involving the authenticity of the deed.

(v) Statutory declaration which made reference to the deed is a subject matter of the dispute. Thus, it is necessary to call witness to confirm the validity and the contents of the same. In this context, this suit is not suitable to be disposed *vide* an application pursuant to O. 14A and/or O. 33 r. 2 of the Rules of Court 2012.

A **Decision Of Court**

[15] I have anxiously considered the submission of both parties and given my full attention to the deed. I am of the considered view that the existence of the deed is not disputed. Thus the
B basic question that needs to be resolved is whether the deed is valid and lawful.

[16] Having directed my attention to the facts and documents filed by the parties herein, I note that plaintiff, Khor and Teoh Chye Khoon @ Teow Chye Khoon are not the named
C beneficiaries to the estate TAY. A very important feature in this case is that the land, amongst other assets, is willed by the deceased to be distributed by the seven sons and grandson of TAY. As such the plaintiff, Khor and Teoh do not have any beneficial interest in the land. The plaintiff and Khor were merely
D the administrators of the estate of TAY and thus holding the assets of the estate, inclusive of the land, trust for the respective named beneficiaries.

[17] It is trite law that until the estate has been fully
E administered by the administrators and distribution made in accordance with the law, even the beneficiaries have no interest or property in the deceased's estate so as to give them title to the land. In any event, even the beneficiaries cannot covenanting to create a gift of a land or any part of it to a third party (see
F *Chor Phaik Har v. Farlim Properties Sdn Bhd* [1997] 4 CLJ 393. It is my considered view therefore that the administrators have acted beyond their power in making the deed of gift. Additionally their action is contrary to the wishes of the deceased. On that basis the deed cannot be considered to be valid as against the estate
G of the deceased. Pursuant to s. 60(4)(a) of the Probate and Administration Act 1959, the plaintiff cannot, amongst others, gift the land or part of it without the previous permission of the court. There was no evidence at all before this court to show that either the plaintiff and/or the defendant have obtained the previous
H permission of the court to purportedly give effect to the gift of the portion of land to the defendant. Therefore to my mind, the claim of the defendant is contrary to the written law and is not only unlawful but illegal as well (see *M & J Frozen Food Sdn Bhd & Anor v. Siland Sdn Bhd & Anor* [1994] 2 CLJ 14; [1994] 1 AMR
I 137, *Luxor Holdings Sdn Bhd v. Hainal-Konyi (M) Sdn Bhd* [2006] 2 CLJ 856; [2006] 3 MLJ 727, *Suntoso Jacob v. Kong Miao Ming & Anor* [1984] 1 LNS 32; [1986] 2 MLJ 170).

[18] In coming to this decision I am mindful of the fact that the purported gift has not been perfected since 1984, as it appears that no transfer was affected into the defendant's name by having his name registered in the title to the portion of the land. Even assuming that the deed is valid, an imperfect gift need not be fulfilled by the donor, since no consideration has been given by the donor to acquire it and an incomplete gift can be revoked at any time – see *Ngan & Ngan Holdings Sdn Bhd & Anor v. Central Mercantile Corporation (M) Sdn Bhd* [2010] 3 CLJ 818, *Saadiah binti Jusoh v. Ahmad bin Jusoh* [1974] 1 LNS 145, *Koperasi Wanita Sarawak Bhd & Anor v. Robert Sim Teck Hock* [2005] 3 CLJ 188.

[19] The defendant contended that the payment of the quit rent in respect of the potion of the land may amount to the consideration for the deed. However, again, I must stress that there is nothing adduced before this court to show that the defendant had affected payment of quit rent since 1984 except for some evidence to show that the defendant had tendered payment purported to be a partial payment of quit rent sometime in February 2010 (refer p. 38 IDP read with p. 37 for the date). On the contrary the defendant in fact confirmed that he had not been paying any quit rent for the past years until his tender in February 2010. In any event the rejection by the plaintiff of this tender of quit rent goes to show that she did not recognise the defendant's occupation of the portion of the land. It must also be pointed out that deed does not say emphatically that the consideration for the gift is the payment of the quit rents by the defendant. In this regard the cases of *Ang Toon Chew & Sons (Malaysia) Sdn Bhd v. Wakil-wakil Diri Bagi Mohamed Taib Yusoff, Si Mati* [1997] 2 CLJ 687; [1998] 5 MLJ 481 and *Manian Kandasamy v. Pentadbir Tanah Daerah Raub & Anor* [2011] 7 CLJ 583 are illustrative and relevant.

[20] As stated above, the plaintiff and Khor are the registered proprietors of the land, *albeit* in their representative capacity to the estate of TAY. Their title to the land is indefeasible pursuant to s. 340 of the National Land Code ("NLC"). On the facts of this case, the exceptions to s. 340 of the NLC do not apply. Thus, the plaintiff holds an indefeasible title and interest to the said land – see *Tan Ying Hong v. Tan Sian San & Ors* [2010] 2 CLJ 269, *Amar Singh Sundar Singh & Ors v. Jivanjit Kaur Sohan Singh* [2010] 7 CLJ 285. That the defendant herein have not shown any basis for this court to rule that he in fact has a registrable interest in the land.

[21] With regard to issue of statutory declaration sworn by the beneficiaries of the estate of TAY, I am of the view that it cannot and ought not be used by the defendant to support his claim as it in fact relates to Lot 1092 which has been subdivided between the plaintiff and Teoh through an order of court which is binding as the judgments have not been set aside (refer pp. 5 to 19 IDD).

[22] In respect of the private caveat, the defendant's alleged interest in the land is only in respect of the portion of one acre yet he has caveated the whole land. Even though the statutory declaration to the caveat states the defendant's alleged interest is over a part of the land, the defendant has failed to identify the portion by annexing a plan thereto (see s. 323(3)(c) NLC).

[23] Further I must also observe that having obtained the deed in 1984 and over the years it appears that the defendant had been sleeping on his rights until this claim by the plaintiff was initiated. The defendant had not taken any timeous steps to enforce his alleged interest in the portion of the land by commencing proceeding in a court of law although he did at one time under Taiping High Court Civil Suit No.22-2-1999 but the claim was discontinued by him. Thus the doctrine laches would be applicable *vis-à-vis* his counter-claim – see *In re Len Chee Omnibus Company Ltd; Chin Sow Lan v. Lee Chee Omnibus Company Ltd & Ors* [1969] 1 LNS 59; [1969] 2 MLJ 202.

Conclusion

[24] Based on the reasons adumbrated above, I hereby allowed encl. 53 with costs and answered the question posed and ruled that the deed relied on by the defendant is his defence and counter-claim is invalid and unenforceable. Thus the defence and counter-claim fail *in limine*. It follows therefore also that in respect of the private caveat, the defendant does not have a registrable interest in the portion of the land and thus the caveat was wrongly entered.

[25] I so order.